

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2003-091366

03/08/2011

HONORABLE BRUCE R. COHEN

CLERK OF THE COURT
C. Gauna
Deputy

IN RE THE MATTER OF
LESLEY M EISENHOUR

FRANCES SUSAN MCGINNIS

AND

HYRUM MARK MCLEMORE

RODNEY M MATHESON

STEVEN K LARSON
CONCILIATION SERVICES-SE
GREG IDLEMAN
PO BOX 7361
GOODYEAR AZ 85338

**RESOLUTION MANAGEMENT CONFERENCE
REFERRAL FOR PARENTING CONFERENCE
EVIDENTIARY HEARING SET**

Courtroom 304-SE

1:43 p.m. This is the time set for Resolution Management Conference. Petitioner/Mother, Lesley M. Eisenhour, is present with counsel, Frances Susan McGinnis. Respondent/Father, Hyrum Mark Mclemore, is present with counsel, Steven K. Larson for Rodney M. Matheson.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

This matter comes before the court on the Petition for Modification filed by Father on December 7, 2010. Mother filed her Response thereto on January 12, 2011. It is important for there to be a summary of the case and facts so that the positions can be identified.

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The parties have one child in common, Rosemary, born January 19, 2001. The parties have joint legal custody of Rosemary. Under the original orders, both parties were residing in the state of Arizona. However, in 2009, Mother moved to Utah but was not certain at that time whether it was a temporary or long term relocation. Therefore, the parties agreed that for the 2009-2010 school year, Rosemary would reside with Mother in Utah. They further agreed that for the 2010-2011 school year, Rosemary would reside during the school year with Father in Arizona.

Mother has now decided that her relocation to Utah is permanent in nature. Each parent is therefore seeking an order that would designate that parent's residence to be Rosemary's primary home during the school year.

Burden of proof is a confusing concept when applied to this case. Father filed the Petition to Modify, which would suggest that he holds the burden of proof. It could also be argued that Mother is seeking a relocation order which would assign to her the burden of proof. It is therefore the opinion of this court that the focus shall be on the best interests of Rosemary and each party holds the burden of proof as to why his or her position is more appropriate. As for sequence of presentation, since Mother is technically seeking the relocation, she shall be the first to present followed by Father's presentation.

Both parties are on notice that the court shall apply the statutory factors of A.R.S. § 25-408, which incorporates the factors of A.R.S. § 25-403(A). Each should therefore be prepared to present his or her case with all the statutory factors in mind.

By agreement, the parties shall participate in a Parenting Conference, which will also include a separate interview of Rosemary. Both parents are concerned that Rosemary has been explicitly or implicitly influenced by the other parent. Therefore, far less weight shall be given to Rosemary's simply stated preference of residing in Utah with Mother or residing with Father in Arizona during the school year. The inquiry of Rosemary should therefore include the following:

1. The advantages that Rosemary identifies about remaining at her same school with her same social group for future years as she has enjoyed during this current school year.
2. The advantages that Rosemary perceives about returning to her prior school in Utah (attended in the 2009-2010 school year) and returning to that prior social group.
3. The stated concerns that Rosemary has about continuing to reside in Arizona with Father as well as her concerns about leaving her home in Arizona during the school year.
4. The stated concerns that Rosemary has about returning to reside in Utah with Mother as well as her concerns about leaving her home in Utah during the school year.

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5. Other advantages that Rosemary perceives about residing in Arizona during the school year as well as advantages she sees with living in Utah during the school year.
6. Any other factors that are of importance to Rosemary in this overall process.
7. Whether and to what extent Rosemary perceives that she was influenced by the input of either party or any other person.

IT IS ORDERED the parties shall participate in a **Parenting Conference with Children's Interview**. The parties will be advised by separate minute entry of the name and telephone number of the Parenting Conference Provider and other relevant information regarding the Parenting Conference. The parties shall comply with all instructions and directives issued by the Provider.

IT IS FURTHER ORDERED that immediately following this hearing each party is directed to pay the **\$300 per party** fee at the Clerk of the Court filing counter. If you cannot afford to pay the entire amount today, you will be billed for the balance.

WARNING

IF YOU FAIL TO APPEAR AT THE PARENTING CONFERENCE AS ORDERED, YOU MAY BE REQUIRED TO PAY A \$100 NO SHOW FEE. IF YOU CANNOT ATTEND, YOU MUST REQUEST AND BE GRANTED PERMISSION FROM THE JUDGE IN YOUR CASE TO RESCHEDULE THE CONFERENCE AT LEAST THREE FULL COURT DAYS BEFORE THE CONFERENCE. IF AN AGREEMENT IS REACHED PRIOR TO YOUR APPOINTMENT DATE, YOU MUST SUBMIT A REQUEST TO THE JUDGE TO VACATE THE CONFERENCE AND WAIVE THE FEE IN ORDER TO AVOID FEE COLLECTION.

It is recognized that there are two central issues. The most pivotal of the two relates to school year placement. The second issue relates to the parenting time schedule once school year placement is decided.

In addressing this second issue, each parent shall develop a detailed parent access schedule that the parent believes should apply whether Rosemary lives with that parent during the school year or with the other parent. The parties shall exchange these proposed schedules by no later than April 17, 2011. The attorneys are then asked to work with the parties to compare the schedules and to determine common ground and differences. They are then encouraged to work together to develop as much of an agreed upon schedule as possible. Those agreed upon terms can then be adopted by the court regardless of whether the ultimate decision places Rosemary with Mother or Father during the school year. Both parties are on notice that their proposed schedules should emphasize the commitment that parent has to ensuring that Rosemary has the most meaningful parenting opportunities with the other parent throughout the year.

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There are and shall be some financial issues to address as well. This includes prior agreements regarding suspension of child support and payment of transportation expenses. Each party is directed to compile what he or she believes to be financial claims and shall make full disclosure to the other party by April 17, 2011. Those financial claims may thereafter be supplemented as additional financial issues arise. This disclosure will ensure that each party is fully prepared to address any claims for reimbursement, credits, refunds, or other financial claims.

IT IS ORDERED setting Evidentiary Hearing on July 5, 2011 from 9:00 a.m. to noon and from 2:00 p.m. to 5:00 p.m. (Time allotted: 6 hours) before the Honorable Benjamin Norris at the Southeast Judicial District, 222 East Javelina Avenue, Courtroom 404, Mesa, Arizona 85210. Due to the judicial rotation scheduled to occur in June, 2011, this represents a change in judicial assignment and both parties are on notice thereof in accordance with Rule 6 of the Arizona Rules of Family Law Procedure and Rule 42 of the Arizona Rules of Civil Procedure.

IT IS FURTHER ORDERED any evidence intended to be submitted as exhibits at the time of the Evidentiary Hearing must be brought to Judge Norris' Clerk in Courtroom 404 **no later than 12:00 p.m. on Monday, June 27, 2011 with a coversheet listing the description of the exhibits.** All exhibits must be hand-delivered to Courtroom 404 and must have colored paper separating the exhibits. Any exhibits submitted shall be copied to the opposing party at that same time. The parties shall coordinate their exhibits so that each party does not present duplicate exhibits of the other party. In addition, at the time of the commencement of the hearing, **each party shall provide an extra copy of the exhibits for use by the Court during the hearing. This extra set of exhibits shall be noted to be the "Bench Copy".**

2:37 p.m. Matter concludes.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.